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Office of Intelligence Policy and Review

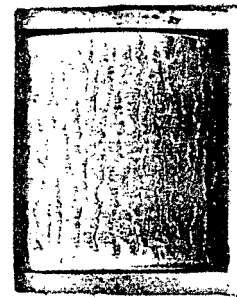
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TO: Admiral B.R. Inman
Deputy Director
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FROM: *Raw* Richard K. Willard
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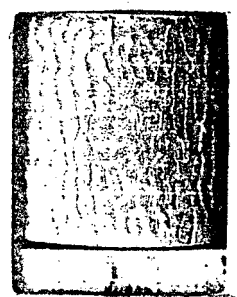
The Attorney General asked me to send you the enclosed draft of a speech prepared for delivery on December 18, 1981, to the Los Angeles World Affairs Council. This will be the Attorney General's first formal address on the subject of intelligence and the law. However, we are not making the topic of this speech public until next week.

Enclosure.

DD/A REGISTRY

FILE: Speeches

*With primary as
a reference document
to respond to
queries*



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4th Draft

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REMARKS BY THE ATTORNEY GENERAL
LOS ANGELES WORLD AFFAIRS COUNCIL

DECEMBER 18, 1981

It is always a pleasure to come home. It is an even greater pleasure to come home to address so important a group on a subject of great importance.

This is a time of great change in the federal government. We are doing things in new and, I believe, better ways -- with a heightened concern for the rights of the individual both as a citizen of this free Nation and as a taxpayer.

When I first joined the government last January, I was reminded of an old story about Oliver Wendell Holmes late in his distinguished career on the Supreme Court. Holmes found himself on a train. Confronted by the conductor, he couldn't find his ticket. Recognizing the distinguished jurist, however, the conductor told him not to worry, that he could just send in his ticket when he found it. Holmes looked at the conductor with some irritation and replied:

"The problem is not where my ticket is.

The problem is, where am I going?"

In its first year, the Reagan Administration has recharted the course of government in many areas -- and it has set out confidently upon the course it has charted.

Today, I want to discuss one area of essential and beneficial change. We have begun the process of renewing and enhancing the legitimate intelligence-gathering activities of our government.

For many of us here of a certain age, the significance of intelligence mixes with memories of an anniversary observed just last week. Forty years ago on December 7 our Nation awoke to experience the reality of inadequate intelligence. Even as the pacific war's beginning testified to the inadequacy of this Nation's intelligence capabilities, a much-improved American Allied intelligence system speeded its successful ending.

The importance of intelligence gathering to this country is, however, as old as the country. George Washington, who personally supervised such operations during the Revolutionary War, in 1777 noted "the necessity of procuring good intelligence" and the "secrecy" upon which the effort depends. From that day to the present, effective and secret intelligence-gathering has enhanced the security of the United States. In the nuclear age -- today and tomorrow -- it is essential to our preservation.

At the same time, secrecy cannot be unrestrained in a democracy. Ours is a nation of laws and not merely of men because we recognize the dangers when even well-intention men exercise power in secret. Even as the preservation of our national security requires effective intelligence gathering, the

preservation of our national principles requires accountability and obedience to law in the exercise of government authority -- especially when done secretly.

Prior to 1975, intelligence matters themselves only occasionally received public exposure. U.S. intelligence remained an iceberg with nine-tenths of its substance below the surface.

During the 1970s, however, a number of intelligence abuses were disclosed in the Congress and the press, including:

- The FBI's "Operation COINTELPRO" aimed at "disruption" of certain domestic groups and "neutralization" of individuals deemed threats to domestic security;
- The CIA's "Operation CHAOS" aimed at domestic dissident groups, involving indexes and files on individuals and 100 groups;
- The alleged involvement of the CIA in assassination plots and the unethical testing of drugs on Americans; and
- Mail opening, electronic surveillance, and physical searches in the United States without regard for fourth amendment standards.

An emotionally charged, public reaction naturally followed. Administration and Congressional bodies concluded, however, both that a secret intelligence capability was in fact necessary to the preservation of our democratic society and that the major portion of our intelligence agencies' activities within legal

limits. Nevertheless, there were excesses that could not be condoned.

In response, President Ford developed an Executive Order to remedy the perceived difficulties caused by an absence of clear authorities, lines of responsibilities, and operational guidelines. Issued in February 1976, Executive Order 11905 contained a brief description of the National Security Council decisionmaking structure, the functions of each of the intelligence agencies, and a statement of limitations on the use of various types of intelligence collection techniques either in the U.S. or against Americans abroad. In addition, it required the Attorney General to develop guidelines. That Order also established the Intelligence Oversight Board to investigate charges of illegality or impropriety.

In January 1978, President Carter replaced Executive Order 11905 with Executive Order 12036. The new Order added an additional level of detail to the structure created by President Ford. It required that the Attorney General develop or approve procedures governing virtually every aspect of intelligence gathering in the U.S. or affecting U.S. citizens abroad. As a result, over 30 discrete sets of procedures and guidelines required approval by the Attorney General -- and scores of interagency directives and regulations were created.

Congress also responded in this period of national soul-searching -- at first, by setting up permanent House and Senate Select Committees on intelligence to oversee the activities and budgets of our intelligence agencies. In 1978 it enacted the

Foreign Intelligence Surveillance Act, which established new administrative and legal requirements for electronic surveillance.

When the Reagan Administration took office in January 1981, there had been six full years of revelation, condemnation, and an ever-increasing body of new regulations for United States intelligence agencies. That the men and women of the Intelligence Community were able to function in the atmosphere of suspicion and mistrust during this period is a testament to their dedication and professionalism. There were, however, serious costs to the effectiveness of our intelligence effort during this period:

- First, intelligence agencies and their employees became cautious and reluctant to undertake perfectly legitimate activities.
- Second, cooperation among agencies was discouraged by rigid rules about the jurisdiction and powers of particular agencies, and by prohibitions on the flow of information among agencies.
- Third, massive leaks and the exposure of legitimate intelligence matters compromised many secrets and called into question our ability to protect any classified information from unauthorized disclosure.

In summary, President Reagan inherited an intelligence community that had been demoralized and debilitated by six years of public disclosures, denunciation, and budgetary limitations.

Unfortunately, during this same period, our need for a reliable foreign intelligence capability was dramatically increasing.

Communist takeovers in Indochina -- as well as the loss of pro-Western governments in Central Asia, the Middle East, and the Horn of Africa -- posed new dangers. By the time the Russians invaded Afghanistan and the Iranians took our diplomats hostage, the Carter Administration itself had begun to appreciate the need for more effective foreign intelligence.

The threat to our government and its citizens from hostile intelligence services and international terrorist groups was also increasing dramatically. By statute and Executive Order, the FBI has primary responsibility for countering the clandestine intelligence activities of foreign powers and international terrorist activities within the United States. Since the FBI is part of the Department of Justice and under the supervision of the Attorney General, I have become acutely aware of the hostile intelligence and international terrorist threat we face in the United States.

The hostile intelligence threat, and particularly the activities of the KGB, have at long last received some media attention in recent months. I welcome this attention because it is important for the American public to realize that hostile intelligence agents increasingly operate in the United States under a number of guises:

-- First, as diplomats. About one-third of the Soviet bloc personnel in the United States assigned to embassies, consulates, and the U.N. or, other international organizations are believed to be full-time intelligence officers. And over the last

dozen years the number of official representatives of governments with hostile intelligence activities in our country has increased by 400 percent.

- Second, as trading company representatives. There are dozens of corporations in the United States that are largely or exclusively owned by the Soviet bloc countries. Earlier this week in Los Angeles, a Polish trading company official who had been purchasing classified documents from an employee of one major defense contractor, was sentenced to ____.
- Third, as students, scientists, and reporters. Soviet bloc exchanges with the United States have increased dramatically over the past decade. And their ranks have been packed with full-time or part-time intelligence operatives.
- Fourth, as immigrants and refugees. Although virtually non-existent prior to 1973, Soviet immigration here has since then amounted to 150,000. More recently, there has been a vast influx of Cuban refugees -- who last year alone exceeded 100,000. We believe a significant number of these recent refugees from both countries have been agents of Soviet and Cuban intelligence.
- Finally, we know that hostile intelligence services continue to infiltrate agents under assumed identities. In 1980 the FBI disclosed that Colonel Rudolph Hermann of the KGB had entered this country through

Canada with his wife and son a dozen years earlier and had thereafter posed as a free-lance photographer living in a suburb in New York City.

The likely number of foreign spies in our country in those guises has increased drastically over the last decade. Unfortunately, our resources have not increased. At one time the FBI had resources to match suspected hostile intelligence agents in the United States on a one-to-one basis. Now, the number of hostile agents has grown so much that our FBI counterintelligence agents are outnumbered by three or four to one.

In addition to increasing their number of agents, hostile intelligence services have placed a high priority on scientific and technical information, much of which is unclassified. The "Silicon Valley" near San Francisco and Southern California defense contractors, for example, have been the targets of intensive foreign intelligence efforts.

Foreign agents -- often posing as businessmen, diplomats, or newsmen -- befriend employees in the United States, request innocuous information on various pretexts with nominal reimbursement, and finally attempt to obtain sensitive information in return for substantial cash payments. In a case last year, a Belgian businessman was charged with offering up to \$500,000 for American employees to steal computer software technology he was seeking for the Soviets.

United States businessmen traveling in the Soviet bloc are lured into compromising situations and then blackmailed into providing information and services.

High-technology products that cannot legally be exported to the Soviet bloc are frequently sent to "front" corporations in Western Europe and then transshipped to the ultimate destination. Walter Spawr was convicted here in California last year for violating the Export Administration Act by shipping 50 high-energy laser mirrors to the Soviet Union by way of consignees in West Germany and Switzerland. Earlier this month here in Los Angeles, a federal court sentenced two individuals to prison for illegally exporting state-of-the-art computers and other technological equipment to West Germany for diversion to Soviet bloc countries.

The costs to national security are incalculable because our superior technology defends against Soviet military advantages in manpower and sheer volume of weaponry. A television documentary on the KGB shown by the Canadian Broadcasting Company a few months ago, for example, concluded that the theft of inertial guidance technology by Soviet intelligence improved the accuracy of Soviet ICBM's and made U.S. land-based missiles vulnerable, thereby creating the need to build a costly MX missile system as a replacement. The dollar cost of the proposed MX missile system -- which may exceed \$30 to 60 billion dollars -- illustrates the effectiveness of Soviet intelligence.

Perhaps even more insidious than such efforts is the threat posed by hostile "active measures" in this country aimed at influencing public opinion and the political process through "disinformation" and "agents of influence." Most serious of all, however, is the threat of international terrorism. Although we have been fortunate as a country to have been spared the degree

of terrorism experienced by many of our Western European allies, we cannot permit our relative good luck to engender complacency. A small number of well-trained fanatics could change our fortunes overnight. As all of you know from press reports, the threat is real today -- we believe that Libya is sponsoring an effort to assassinate high U.S. government officials.

As members of an open society that is the target of aggressive foreign powers, we must all recognize the grave threat from hostile intelligence and the need for more effective U.S. intelligence and counterintelligence. As a constitutional democracy, we must also recognize the necessity of accountability by our own intelligence agencies -- and the ultimate need to provide a legal framework that protects the liberties of our citizens. But we must do more than merely recognize such paramount concerns.

The Reagan Administration is firmly committed to revitalizing the United States intelligence effort, which includes countering the threat of hostile intelligence services and international terrorist groups. That commitment is apparent in the President's recent promulgation of three new Executive Orders:

-- Executive Order 12331 reestablished the President's Foreign Intelligence Advisory Board under the direction of Ambassador Anne Armstrong.

-- Executive Order 12333, signed two weeks ago, clarifies the authorities, responsibilities, and limitations concerning U.S. intelligence.

-- Executive Order 12334 continues the President's Intelligence Oversight Board, which is now chaired by Professor Campbell of the Hoover Institute at Stanford.

Revised procedures and guidelines will implement the new Executive Orders. This Administration is also making available increased resources to the intelligence community and supports rebuilding personnel levels.

On behalf of the Administration, the Justice Department has proposed amendments to the Freedom of Information Act to improve our ability to protect intelligence sources and methods. In addition, we support exemption of CIA and other key intelligence agencies from compliance with that Act.

The Administration also supports new legislation that would impose criminal penalties on those who make a practice of ferreting out and exposing the classified identities of our intelligence agents -- frequently risking lives as well as our security interests.

Finally, the Justice Department is committed to vigorous enforcement of national security legislation, including laws prohibiting unlawful export of advanced technology and munitions.

Throughout, however, our goal has been to improve the effectiveness of U.S. intelligence agencies without endangering the rights of Americans. Intelligence activities must be conducted in a lawful manner. We will maintain five basic safeguards to ensure that the abuses of the past will not recur: first, strict observance of fourth amendment and statutory requirements for

searches and electronic surveillance; second, a thorough appreciation for the distinction between foreign intelligence and domestic security matters; third, appropriate limitations on the authority of the CIA to function within the United States; fourth, cooperation with congressional oversight through the House and Senate intelligence committees; and fifth, effective oversight within the Executive branch itself by the President's Intelligence Oversight Board and by the Attorney General as chief law enforcement officer of the United States.

First, the Fourth Amendment protects all persons within the territorial jurisdiction of the United States, including aliens and commercial enterprises. It also protects Americans when they are abroad. Those protections, which generally require issuance of a judicial warrant, apply to the so-called "fourth amendment techniques" -- searches and seizures, wiretapping, bugging, and closed-circuit monitoring. The courts have held that other types of surveillance in public places, including "shadowing" or photographing, do not constitute Fourth Amendment techniques.

Although the issue has not been decided by the Supreme Court, the U.S. Courts of Appeals have held that the use of Fourth Amendment techniques for foreign intelligence purposes does not require a judicial warrant. Instead, the courts have determined that the President may approve the use of such techniques as an exercise of his constitutional authority as Commander-in-Chief and principal executor of our country's foreign policy. This Presidential authority has been delegated to the Attorney General,

who may approve proposed activities based upon a finding in each case that the target of the activity is an "agent of a foreign power."

The term "agent of a foreign power" is a shorthand reference to a complex set of requirements that far transcend the common law concept of agency. It includes:

- (1) officers and employees of foreign governments abroad, or such persons in the United States who are not U.S. citizens or permanent resident aliens; or
- (2) any person who knowingly engages in clandestine intelligence activities, sabotage or international terrorism, on behalf of a foreign power.

This standard does not permit targeting of law firms or businesses in the United States that act in a lawful manner as representatives of foreign governments or business interests merely because their activities may be of interest to the U.S. government.

The constitutional requirements governing electronic surveillance for foreign intelligence purposes within the United States have themselves been supplemented by the Foreign Intelligence Surveillance Act of 1978. Under this Act, a special court of federal District Judges considers government applications to conduct electronic surveillance within this country for foreign intelligence purposes. All such applications must first be approved by the Attorney General.

Second, in addition to those fourth amendments and statutory safeguards, there are also limits on the purposes for

which intelligence activities may be undertaken. In the 1960s and early 1970s, efforts to gather information and affect the activities of domestic dissident groups were blended with foreign intelligence and counterintelligence activities under the blanket of "national security." In addition, abuses of power occurred when the intelligence agencies became involved in politically motivated spying on domestic groups.

In its landmark decision in the "Keith" case, the U.S. Supreme Court in 1972 held that the Executive could not use its constitutionally based national security powers to justify surveillance of purely domestic dissident groups. Where there is no foreign connection, efforts to counter domestic unrest must be conducted in accordance with the standards applicable to other law enforcement activities, including the warrant requirement. Today, domestic security investigations are conducted in a manner that is both administratively and legally separated from foreign intelligence and counterintelligence activities.

By statute and executive order the functions of agencies in the intelligence community are limited to:

- obtaining foreign intelligence -- which is defined as "information related to the capabilities, intentions and activities of foreign powers, organizations or persons;"
- carrying out special activities directed at foreign objectives and
- conducting counterintelligence activities -- which are undertaken to protect against espionage, other

clandestine intelligence activities, and international terrorism conducted on behalf of foreign powers. The functions and activities of the intelligence agencies are thus focused on foreign persons and events abroad, not U.S. citizens or businesses.

Although U.S. citizens and businesses frequently have information relevant to matters of interest to our foreign intelligence or counterintelligence efforts, that alone does not permit the use of intrusive techniques to gather information about their activities. The intelligence community does, however, enjoy the cooperation of many citizens, including the business community, who voluntarily provide intelligence information that may come into their possession. The CIA's Domestic Collection Division is devoted solely to the overt collection of foreign intelligence from sources within the United States. The FBI's counterintelligence efforts are greatly aided by cooperation and assistance from the business community, and the FBI conducts an ongoing program to increase the business community's awareness of the threat posed by hostile intelligence services.

Third, the National Security Act of 1947 specifically prohibits the CIA from exercising "law enforcement" or "internal security" functions. President Reagan's new Executive Order

12333 confirms that CIA's basic mission is abroad, and that FBI has primary responsibility for foreign intelligence and counterintelligence activities in the United States.

-- The new Order authorizes the CIA to collect foreign

intelligence and conduct counterintelligence activities in the United States, but only in coordination with the FBI under procedures agreed to by both the Director of Central Intelligence and the Attorney General. CIA may conduct special activities in the United States only when they are directed at foreign objectives and are not intended to influence U.S. political processes, media, or public opinion.

-- The Order further limits CIA's collection of information concerning Americans to specific enumerated categories. It may not use clandestine means to collect foreign intelligence in the United States concerning the domestic activities of Americans.

-- Finally, the Executive Order prohibits the CIA -- except in a few very limited circumstances -- from conducting electronic surveillance, unconsented physical searches, or physical surveillance in the United States, or from infiltrating domestic organizations.

The national interest does, however, demand that the intelligence community provide government officials with information concerning problems that transcend the national boundaries of the United States. These include international terrorism, international narcotics trafficking, technology transfer, and illicit traffic in armaments, as well as multinational economic problems such as energy and food. It has not therefore proved practical to have

too rigid a jurisdictional division between the intelligence agencies. The President's new executive order therefore gives the intelligence agencies greater flexibility of operation where their responsibilities overlap.

Fourth, congressional oversight of intelligence activities provides a strong, additional check on abuses of power. Executive Order 12333 requires intelligence agencies to furnish various types of information to the congressional intelligence committees. These committees were consulted in the process of developing the new Executive Order, and most of their suggestions were accommodated or adopted.

Fifth, the new presidential orders preserve the essential elements of the oversight responsibilities of the Intelligence Oversight Board, the Attorney General, and the Inspector Generals and General Counsels of the Intelligence Community. The Intelligence Oversight Board will continue to review the oversight practices and procedures of agencies within the intelligence community, to conduct inquiries and to make recommendations to the agencies and the President.

Of special importance, under the new orders, the Attorney General will continue to have a substantial role in reviewing, authorizing, and overseeing U.S. intelligence activities:

- In the review of covert operations and other sensitive activities that raise significant legal questions;

- In deciding on a case-by-case basis whether to approve the use of certain intrusive techniques

either in the United States or for Americans abroad;

- In developing procedures to guide the conduct of intelligence activities that could have an impact upon Americans; and
- In receiving and investigating reports of possible violations of law by intelligence agency employees and other persons.

These processes will strengthen the public confidence in our intelligence system without handcuffing vital activities.

Too frequently in a democracy, the pendulum of public policy swings in an excessively wide arc. Some fifty years ago Secretary of State Stimson observed: "Gentlemen do not read each other's mail." As we have learned since then, however, the real world is not peopled exclusively by gentle souls. The survival of this Nation depends upon effective intelligence and counter-intelligence measures. I -- like all Americans -- would prefer a gentler world. All Americans also prefer and demand that effective intelligence gathering observes due regard for the principles and norms that set this Nation apart.

In making intelligence gathering more effective and in protecting the rights guaranteed to all Americans by the Constitution, we must keep the balance true and realistic. Many years ago Mark Twain wrote:

"We should be careful to get out of an experience only the wisdom that is in it -- and stop there; lest we be like the cat that sits down on a hot stove

lid. She will never sit down on a hot
stove lid again -- and that is well;
but also she will never sit down on
a cold one anymore."

This Administration intends to remain ever conscious of the
lessons we have learned. It intends to improve the effectiveness
of America's intelligence community. I believe that the actions
I have discussed today and those we undertake in the future will
keep the balance true.

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